

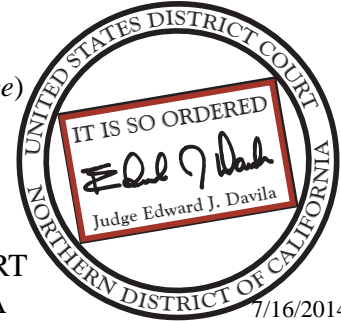
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ATTORNEYS FOR PLAINTIFFS RICHARD
 NOLL AND RHYTHM MOTOR SPORTS, LLC

IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION



RICHARD NOLL AND RHYTHM)
 MOTOR SPORTS, LLC, Individually and)
 on behalf of all others similarly situated,,)
)
 Plaintiff,)
)
 v.)
)
 EBAY, INC.,)
)
 Defendant.)

CASE NO. 5:11-cv-04585-EJD

**STIPULATION REGARDING CLASS
 CERTIFICATION**

Date: February 21, 2014
 Time: 10:00 a.m.
 Judge: Honorable Edward J. Davila
 Courtroom: 4, 5th Floor
 Trial Date: Not yet set

Plaintiffs Richard Noll and Rhythm Motor Sports, LLC (“Plaintiffs”) and Defendant
 eBay, Inc. (“eBay”) file this Stipulation Regarding Class Certification and state:

The following definitions apply to this Stipulation:

“Class Period” means the time period September 16, 2008 through June 19, 2012.

“GTC Listing” means a listing placed with the duration of “Good ‘Til Cancelled.”

1 “Insertion Fee” is the basic fee a person is charged when they list an item on eBay.

2 “Optional Feature Fee” means any of the fees described below the heading “Optional
3 feature fees” on the Fees Schedule pages that are hyperlinked to the User Agreement.

4 “Core” means listings placed on eBay.com.

5 “Motors” means listings placed on ebaymotors.com or ebay.com/motors.

6 “Stores” means listings placed via the listing format called Store Inventory format.

7 “Renewal Fees” means Insertion Fees and any Optional Feature Fees charged 30 days or
8 more after the original placement of a GTC Listing.

9
10 Counsel for Plaintiffs and eBay have conferred and the Parties each agree, for the sole
11 purpose of Plaintiffs’ anticipated motion for class certification, not to contest the following
12 assertions:

13
14 The proposed Class consists of all persons who placed a GTC listing during the Class
15 Period, and incurred one or more Renewal Fees, except for persons who placed only Stores GTC
16 listings from September 16, 2008 through March 29, 2010, and who did not place any other GTC
17 Listings in Core, Motors or at any other time during the Class Period.

18 The profits earned by proposed Class Members for any sale resulting from a GTC Listing
19 would require evidence of the cost of each item sold and potentially the shipping and other costs
20 associated with completing the sale, which evidence would be individualized for each proposed
21 Class Member and potentially each item sold and which evidence might not be available should
22 the proposed Class Member not recall or not have records of the costs. Therefore, Plaintiffs have
23 no source of Class-wide evidence of profits, if any, derived by each proposed Class Member
24 from GTC Listings. In addition, Plaintiffs do not have sufficient evidence to determine the
25 profits (if any) from their own sales associated with their GTC listings.
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1 eBay's electronic data generally contains contact information for the User ID(s) of sellers
2 who placed GTC Listings during the Class Period and were charged Renewal Fees. The identity
3 and number of Class Members can therefore be determined. This is subject to limited exceptions
4 where sellers have requested that their contact information be deleted or where there is an
5 unexpected glitch in the data.
6

7 The number of unique User IDs of Proposed Class Members exceeds 1 million.

8 The amount of Renewal Fees incurred and paid by each unique User ID is determinable
9 from eBay's electronic data by querying that data for each unique User ID's GTC Listings during
10 the proposed Class Period and identifying and adding together the associated Renewal Fees.

11 The Renewal Fees incurred and paid by each unique User ID can be segregated by type
12 of fee (*i.e.*, Insertion Fee and each Optional Feature Fee), the date of each Renewal Fee relative
13 to the original listing date, and the platform or format for each listing (*e.g.*, Core, Motors or
14 Stores).
15

16 Renewal Fees can be calculated from eBay's electronic data for each proposed unique
17 User ID for the proposed Class Period and segregated into combinations of (1) type of fee (*i.e.*,
18 Insertion Fee or Optional Feature Fee); (2) date and date range of fees (*e.g.*, fees for listings
19 placed between September 16, 2008 and December 15, 2008); (3) number of renewals (*e.g.*, only
20 the first renewal 30 days after the original listing or multiple renewals after the original listing);
21 and (4) dates and date ranges the Renewal Fees were charged and/or paid (*e.g.*, fees charged
22 and/or paid between October 16, 2008 and January 15, 2009).
23

24 The Parties further agree that this Stipulation satisfies their respective discovery
25 obligations on the issues set forth above, and the Parties will not seek further discovery on these
26 issues prior to or in connection with the class certification process. Notwithstanding the
27
28

1 foregoing, the Parties agree to meet and confer following the Court's ruling on Plaintiffs'
2 anticipated class certification motion to determine the extent to which additional discovery on
3 the issues referenced herein may be necessary in light of the Court's ruling.

4
5 By: /s/ Keith R. Verges
Counsel for Plaintiffs

By: /s/ Whitty Somvichian
Counsel for Defendant

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7
8
9 FILER'S ATTESTATION:

10 Pursuant to General Order No. 45, § X(B) regarding signatures, Keith Verges hereby
11 attests that concurrence in the filing of this document has been obtained.

12 /s/ Keith R. Verges
13 Keith R. Verges

14
15
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that all counsel of record will be served with a copy of this document via
18 the Court's CM/ECF system pursuant to the local rules of this Court, on this 14th day of July,
2014.

19 /s/ Keith R. Verges
Keith R. Verges